

In The Matter Of:

*Merchant Capital, LLC, and New Sunshine, LLC v.
Melania Marks Skincare, LLC*

*Stephen C. Hilbert
October 9, 2013*

Min-U-Script® with Word Index



<p style="text-align: right;">Page 109</p> <p>1 Exhibit 78?</p> <p>2 MR. TULLY: I'm going to object to that</p> <p>3 question because I don't think it's relevant. But</p> <p>4 if yours question was what you posed a moment ago</p> <p>5 as Mr. Hilbert understanding of the ownership and</p> <p>6 control of New Sunshine as of whatever date you're</p> <p>7 putting it forward to, that's fine. You can answer</p> <p>8 that question.</p> <p>9 Q. Well, but my question is, who are the others you</p> <p>10 reference in paragraph 3?</p> <p>11 MR. TULLY: Objection to the relevance of that</p> <p>12 question. I think it's outside of the scope of</p> <p>13 this case and intrudes upon issues that may or may</p> <p>14 not be involved in other pending litigation between</p> <p>15 the parties in this room. I don't think it's</p> <p>16 appropriate. All that being said, do you know the</p> <p>17 answer?</p> <p>18 A. Yeah, I'm going to give you a little longer answer.</p> <p>19 MR. TULLY: I tried to help you, Mr. Tyra.</p> <p>20 MR. TYRA: Thank you. You're doing me a</p> <p>21 solid. Thank you.</p> <p>22 A. So let's go back to August of '11. August of '11</p> <p>23 when we got the letter from Pete Liupakka, which</p> <p>24 was directed by John Menard -- Pete Liupakka</p> <p>25 doesn't do anything unless John Menard tell him</p>	<p style="text-align: right;">Page 111</p> <p>1 Q. So there's no one in particular at that point in</p> <p>2 January you had in mind?</p> <p>3 MR. TULLY: Asked and answered.</p> <p>4 A. Asked and answered.</p> <p>5 MR. TULLY: You can answer again.</p> <p>6 A. I mean, I told you I talked to a couple of high net</p> <p>7 worth individuals and a couple of funds that would</p> <p>8 have been providing some capital if we would have</p> <p>9 gotten an agreement. But John made the decision.</p> <p>10 He couldn't stand the thought of the Hilberts</p> <p>11 making money on any transaction and told Bob Caulk</p> <p>12 that, and Bob Caulk told me and told me that</p> <p>13 precisely that way.</p> <p>14 Q. Were you proposing to buy any other portfolio</p> <p>15 companies other than New Sunshine?</p> <p>16 MR. TULLY: Now I'm going to object. That's</p> <p>17 clearly outside of the scope of this. Now we're</p> <p>18 not talking about New Sunshine. What's the</p> <p>19 relevance there?</p> <p>20 MR. TYRA: Well, it says here that you were --</p> <p>21 Mr. Hilbert was going to -- wanted to buy New</p> <p>22 Sunshine.</p> <p>23 BY MR. TYRA:</p> <p>24 Q. My question is, were there any other portfolio</p> <p>25 companies you were looking to buy other than New</p>
<p style="text-align: right;">Page 110</p> <p>1 to -- that happened to be 90 days after John Menard</p> <p>2 tried to proposition my wife and then spent another</p> <p>3 two-plus weeks hounding her on the telephone, along</p> <p>4 with his wife, to have sex with the two of them.</p> <p>5 This all came about when I had this meeting with</p> <p>6 Bob Caulk. My wife would have filed a suit in</p> <p>7 January except for this right here (indicating).</p> <p>8 BY MR. TYRA: --</p> <p>9 Q. You're referring to the letter?</p> <p>10 A. -- because we thought we were going to be able to</p> <p>11 get through this and buy these companies. The</p> <p>12 other investors -- there were no other investors at</p> <p>13 the time. I had talked to a few private equity</p> <p>14 groups and high net worth individuals, that if we</p> <p>15 would have got be to this point, would have been</p> <p>16 participating in the capital structure of us buying</p> <p>17 New Sunshine. At that current time, there was no</p> <p>18 different ownership than the operating company</p> <p>19 which owned MH Equity and MH Equity Manager.</p> <p>20 Q. Okay. So in terms of other persons or entities</p> <p>21 that would be the others you refer to in</p> <p>22 paragraph 30, at that point in January of 2012,</p> <p>23 were there any others that you had in mind?</p> <p>24 MR. TULLY: Asked and answered.</p> <p>25 A. It would have been post-closing.</p>	<p style="text-align: right;">Page 112</p> <p>1 Sunshine?</p> <p>2 MS. PENCE: What does that have to do with</p> <p>3 relevance on a contract that was signed in</p> <p>4 November 2012? What relevance?</p> <p>5 MR. TULLY: My objection is -- and I'm very</p> <p>6 concerned now you are starting to get into topics</p> <p>7 that are more than arguably potentially the subject</p> <p>8 of other pending litigation we're not here on</p> <p>9 today, and that would be another ground for seeking</p> <p>10 a protective order in this case with respect to</p> <p>11 this witness who has been subpoenaed here for this</p> <p>12 matter. So let's put that one on the list.</p> <p>13 MR. TYRA: Ones that you would seek a</p> <p>14 protective order rather than having him respond to?</p> <p>15 MR. TULLY: Well, yes, because this is not the</p> <p>16 time or place for those kind of questions. You may</p> <p>17 or may not have an opportunity to ask that in the</p> <p>18 other pending litigation in Wisconsin between New</p> <p>19 Sunshine and Mr. Hilbert. And I'm not suggesting</p> <p>20 it is or isn't relevant to that case, but it's</p> <p>21 clearly not relevant here. I don't think this</p> <p>22 court is going to appreciate you trying to conduct</p> <p>23 discovery in those case here. I think your</p> <p>24 starting to do that, and that's the basis of</p> <p>25 objection.</p>